

IP 03-0045-CR 1 T/F US v Moreno-Martinez
Magistrate Kennard P. Foster

Signed on 7/12/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Cause No. IP 03-45-CR-01 (T/F)
)	
BRIDGET MORENO-MARTINEZ)	
)	
Defendant.)	

A M E N D E D
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This matter is before the undersigned U. S. Magistrate Judge pursuant to the Order entered by the Honorable John Daniel Tinder, Judge, on June 20, 2006, designating this Magistrate Judge to conduct a hearing on the Petition for Summons or Warrant for Offender Under Supervision, filed with the Court on June 19, 2006, and to submit to Judge Tinder proposed Findings of Facts and Recommendations for disposition under Title 18 U.S.C. §§3401(i) and 3583(e).

All proceedings were held on July 6, 2006 in accordance with Rule 32.1 of the *Federal Rules of Criminal Procedure*. Ms. Moreno-Martinez appeared in person with her appointed counsel, Juval Scott, Office of the Indiana Federal Community Defender; the government appeared by Joe Vaughn, Assistant United States Attorney; and U. S. Parole and Probation appeared by Diane Bell, who participated in the proceedings.

On July 6, 2006, the Court conducted the following procedures in accordance with Rule 32.1(a)(1) *Federal Rules of Criminal Procedure* and Title 18 U.S.C. §3583:

1. Juval Scott, Office of Indiana Federal Community Defender, was present and appointed by the Court to represent Ms. Moreno-Martinez in regard to the pending Petition for Revocation of Supervised Release.

2. A copy of the Petition for Revocation of Supervised Release was provided to Ms. Moreno-Martinez and her counsel who informed the Court that they had read and understood the specification of the violations and waived further reading thereof.

3. Ms. Moreno-Martinez was advised of her right to a preliminary hearing and its purpose in regard to the alleged specified violations of her supervised release contained in the pending Petition.

4. Ms. Moreno-Martinez would have a right to question witnesses against her at the preliminary hearing unless the Court, for good cause shown, found that justice did not require the appearance of a witness or witnesses.

5. Ms. Moreno-Martinez had the opportunity to appear at the preliminary hearing and present evidence on her own behalf.

6. If the preliminary hearing resulted in a finding of probable cause that Ms. Moreno-Martinez had violated an alleged condition or conditions of her supervised release set forth in the Petition, she would be held for a revocation hearing before the undersigned Magistrate Judge, in accordance with Judge Tinder's designation entered on June 20, 2006.

7. Ms. Scott stated that Bridget Moreno-Martinez would stipulate there is a basis in fact to hold her on the specifications of violation of supervised release set forth in the Petition. Ms. Moreno-Martinez executed a written waiver of the preliminary examination, which was accepted by the Court.

The following proceedings occurred:

1. Ms. Moreno-Martinez, by counsel, stipulated that she committed specifications of violations set forth in the Petition for Warrant or Summons for an Offender Under Supervision, filed with the Court on June 19, 2006 as follows:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.”</p> <p>On June 8, 2006, and June 14, 2006, the offender submitted urine samples which tested positive for cocaine. She admitted using the substance and indicated she was dealing with financial and transportation problems.</p> <p>As reported to the Court in previous violation reports, the offender tested positive for cocaine on the following dates: January 6, 2004; January 16, 2004; February 2, 2004; February 9, 2005; February 18, 2005; February 25, 2005; and March 23, 2005. She admitted using cocaine.</p>
2	<p>“The defendant shall participate as instructed in a program of substance abuse treatment, including testing.”</p> <p>On May 27, 2006, and May 31, 2006, the offender failed to report as required for random urinalysis testing.</p>

The parties stipulated the following in open Court:

(1) Ms. Moreno-Martinez and the government agreed they were ready to proceed to disposition on the pending Petition to REVOKE Ms. Moreno-Martinez’s supervised release in open Court this date.

(2) Ms. Moreno-Martinez admitted that she committed the violations of specifications set forth in the Petition to Revoke Supervised Release stated above.

(3) Ms. Moreno-Martinez has a relevant criminal history category of III. *See*, U.S.S.G. §7B1.4(a).

(4) The most serious grade of violation committed by Ms. Moreno-Martinez constitutes a Grade B violation, pursuant to U.S.S.G. §7B1.1(b).

(5) Pursuant to U.S.S.G. §7B1.4(a) upon revocation of supervised release the range of imprisonment applicable to Ms. Moreno-Martinez is 8 to 14 months.

(6) The parties did not agree as to the appropriate disposition of the case.

(7) The parties did not agree as to self-surrender of the defendant.

2. The defendant, by counsel, and the government each presented evidence regarding appropriate disposition of the case and self-surrender of the defendant.

The Court then placed Ms. Moreno-Martinez under oath and inquired directly of her whether she admitted committing violations of supervised release contained in the Petition. Ms. Moreno-Martinez admitted the violations.

The Court, having heard the admissions of the defendant, the stipulations of the parties, and the arguments and discussions on behalf of each party, **NOW FINDS** that the defendant, Bridget Moreno-Martinez, violated the above-delineated conditions in the Petition.

Ms. Moreno-Martinez's supervised release is therefore **REVOKED** and she is sentenced to the custody of the Attorney General or his designee for a period of 14 months. The Court, having heard the arguments of Ms. Moreno-Martinez and the government, now **GRANTS** Ms. Moreno-Martinez's request for self-surrender. At the conclusion of Ms. Moreno-Martinez's term of confinement, she will not be subject to supervised release.

The Magistrate Judge requests that Diane Bell, U. S. Parole and Probation officer, prepare for submission to the Honorable John Daniel Tinder, District Judge, as soon as practicable, a

supervised release revocation judgment, in accordance with these findings of facts, conclusions of law and recommendation.

Counsel for the parties and Ms. Moreno-Martinez stipulated in open Court waiver of the following:

1. Notice of the filing of the Magistrate Judge's Report and Recommendation;
2. Objection to the Report and Recommendation of the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(B); Rule 72.b, *Federal Rules of Civil Procedure*, and S.D.Ind.L.R.72.1(d)(2), *Local Rules of the U. S. District Court for the Southern District of Indiana*.

You are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge pursuant to Title 28, U.S.C. §636(b)(1)(B) and (C) and Rule 72(b) of the *Federal Rules of Civil Procedure*. You shall have within ten days after being served a copy of this Report and Recommendation to serve and file written objections to the proposed findings of facts and conclusions of law and recommendations of this Magistrate Judge. If written objections to the Magistrate Judge's proposed findings of fact and recommendations are made, the District Judge will make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which an objection is made.

WHEREFORE, the U. S. Magistrate Judge **RECOMMENDS** the Court adopt the above report and recommendation revoking Ms. Moreno-Martinez's supervised release and imposing a sentence of imprisonment of 14 months in the custody of the Attorney General or his designee. Ms. Moreno-Martinez shall self-surrender when designated by the U. S. Bureau of Prisons. Upon Ms. Moreno-Martinez's release from confinement, she will not be subject to a term of supervised release.

IT IS SO RECOMMENDED this 12th day of July, 2006.

Kennard P. Foster, Magistrate Judge
United States District Court

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